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DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP

2101 L Street NW • Washington, DC 20037-1526

Tel (202) 785-9700 • Fax (202) 887-0689

Writer's Direct Dial: (202) 828-2290
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January 4, 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20054

**EX PARTE
PRESENTATION**

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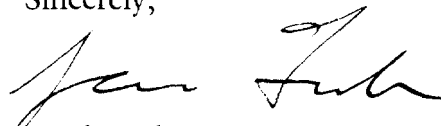
Re: CC Dkt. No. 96-98

Dear Ms. Salas:

On January 3, 2001, Dave Scott, President and CEO of Birch Telecom, Inc., Gregory Lawhon, Senior Vice President of Public Policy and General Counsel of Birch Telecom, Inc., and Albert Kramer and Jacob Farber of this law firm met with Commissioner Susan Ness and Jordan Goldstein, the Commissioner's Legal Advisor. We discussed the need for an elimination or reduction of the restriction on the availability of switching as an unbundled network element in density zone 1 of the top 50 MSAs. The attached materials were distributed at the meeting.

If you need any further information or have any questions, please do not hesitate to call me.

Sincerely,


Jacob Farber

cc: Commissioner Susan Ness
Jordan Goldstein

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1177 Avenue of the Americas • 41st Floor • New York, New York 10036-2714

Tel (212) 835-1400 • Fax (212) 997-9880

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Frequently Asked Questions

Q: Why did you form Cbeeyond? Why is it unique?

A: We are bringing together all the communications tools that a small business needs—starting with voice, Internet service and IP-based applications such as unified messaging, web hosting and E-commerce. We will use an integrated IP-based architecture and deliver converged voice and data over a single platform with seamless integration and delivery. We will use this Internet pipe to bring the latest and best technology and productivity tools to our customers.

No one is doing this today.

Customers will deal with one local representative who knows their needs. They will receive one invoice for all services, and the price will be less than if they purchased each service separately.

We are the only company with a single IP-based network. Other companies may be combining services on one invoice, but they're cobbling together products over multiple networks and managing pulled together support systems. This process is clumsy and expensive.

We have a huge advantage. We are starting with a technologically clean slate. One network means it takes less capital to build and to maintain. We are embracing next generation technologies, and we are building advanced operating and business support systems. Those leading edge systems mean our operating costs will be lower than those of the legacy networks.

Reinvesting infrastructure savings into service excellence through organization, process and automation is key to our strategy. We know that our differentiation will come from our passion about our customer. We are changing the model by decentralizing customer service and creating locally based branch operations that own the responsibility, the information and the empowerment to serve their customer. We are delivering web based management tools that will meet customers' needs for integrated billing, on-line customer care and streamlined processes. We are building a team that understands that true customer satisfaction will drive our esteem, our morale and our value creation. We know that customer satisfaction will be the foundation for a success that has longevity, profitability and opportunity.

We are committed to bringing the quality, features and robustness of the typical public network together with the openness, innovation and speed of the Internet.



John S. Gorman, President and CEO of Cbeeyond Communications, is a former executive of AT&T, BellSouth and WorldCom. He has been a member of the Board of Directors of the National Association of Telecommunications Dealers and the National Association of Telecommunications Users.

Q: What is Cbeeyond's target market?

A: Our customers are businesses with fewer than 100 employees—those who typically use between five and 25 phone lines. All small businesses will benefit from our product. Law firms, medical offices, insurance agencies, auto dealerships, and many other types of businesses are the kinds of businesses who will gain efficiency and productivity through the use of our communication services.

As a Broadband Application Service Provider, we will deliver all services, including local and long distance voice as applications on a dedicated,

private IP network. We expect customers to save 20 to 25% of their current voice bill and receive high speed Internet access included in the Cbeyond bundle.



The high capital requirements of traditional circuit-switch-based Competitive Local Exchange Carriers (CLECs) force them to target businesses with at least 15 lines of local service to justify their costs. With next generation packet technology, Cbeyond will change the rules—delivering high quality competitive telephony and Internet services at reduced costs to this under-served and growing market.

BRAD LINDEN, VP Sales

Q: What makes Cbeyond Communications different?

A: Our mission is to bridge the digital divide—enabling our small business customers with big business capabilities.

We will provide voice and Internet-based applications to small businesses at cost savings typically only available to large enterprises. Voice will be our first application because it represents the greatest portion of a small business customer's communications bill and is the application they value most.

Our services will include much more than voice and Internet connections. Our strategy is to help improve our customer's competitive strength and efficiency with productivity tools. We will launch with unified communications (fax, e-mail and voice mail), web hosting, and E-commerce. Future applications will support network connectivity, managed infrastructure and employee interaction and information sharing (collaboration, conferencing). We will bring the latest and best technology and applications to our customers. We can do it because we will already have provided them high speed Internet access over a private network that has the reliability and quality they need to run their business.



We don't want our customers to be unsure of how to use the Internet, overwhelmed at technology decisions or afraid of obsolete programs and costly support charges. We want them ready to embrace business applications that will help them grow their business, increase productivity, reduce their support fees and prepare for the future.

CHRIS CATCH, VP Business Development

Q: What services will Cbeyond Offer?

A: We will provide high quality local and long distance voice communications, dedicated broadband Internet access, and enhanced Internet-based applications as core services. We can also see many enhanced applications that we can deliver to our customers in the future that will continue to add value—improving their business's competitive strength and efficiency.

Many of our customers will offer the same services at a lower cost, integrated and managed by one provider and delivered with service excellence.



BRIAN CRAVLER, VP Product Development

Q: What do you mean by "changing the customer experience"?

A: Our Cbeyond sales team starts the process of selling "face-to-face," thereby creating a genuine understanding of our customer's business needs. It is the beginning of a partnership with our customers that is built on personal communication and ongoing consultation. Locally-based Customer Relationship Managers will continue the relationship via their accessibility, knowledge of our customer's actual requirements to follow through and communication. Augmented by web-based management and support tools, we are confident that we will alter the way our industry supports

customers.



Cbeyond's central premise is that small business customers are asking for—and deserve more—than they can get today. This under-served market has had to accept service delays, poor customer care, inaccurate and hard to understand bills and unresponsive service providers. Cbeyond intends to change this customer experience.

BRAD HOVET, VP Sales Support and Field Operations

Q: What does “customer friendly” mean to Cbeyond?

A: We will empower customers to manage their communication services through accurate, easy-to-understand, any-time use of the web. Our employees will have the information they need to communicate with, support and “wow” our customers.

Simply put...We will be easy to deal with.

Customers can count on faster and more predictable delivery times. State of the art operational support systems will automate and streamline service delivery. Provisioning, status information, account management and bill paying will be available on line or over the phone.



We recognize that Cbeyond is a new service. Anyone can deliver a product, we will deliver a customer experience. Everything we do is focused on a customer.

JOE OSTERBERG, VP Information Services

Q: How do you want customers to perceive you?

A: Cbeyond Communications is about the customer. We want our customers to understand that our passion for service excellence means we will “Cbeyond” the current landscape of providers. Our next generation technology means we can deliver an experience beyond what small businesses can even hope for today.

Our product will be simple and easy to understand. We will create packaging and services that can easily be enhanced as our customer's business grows.

We want to be recognized for listening to our customers and building a company that responds quickly to the changing needs of the small business segment.

We want them to know us as friendly, accessible and easy to work with—providing a new, fresh way of doing business.



Our customers are small businesses. They are the backbone of our economy. They are the ones who create jobs. They are the ones who pay taxes. They are the ones who are the most vulnerable in the current economic climate. We want to be the company that helps them grow and thrive.

TRACY TEDDER, VP Marketing Communications

Q: What systems will you have to support this new customer experience?

A: Cbeyond has taken great care to create systems that put us ahead of the pack. We are developing state of the art operating support systems (OSS) and back office support systems (BSS) that will reinforce our high-touch, service excellence vision. We will launch with support systems that are highly automated, streamlined and customer friendly.



JOHN KEANEY, Sr. and Chief Information Officer

Q: How will the transmission quality compare to traditional phone lines? Is the technology ready?

A: Voice over Internet Protocol (VoIP) is a young, but relatively mature technology. The technology works today. You may already be using VoIP for long distance, international, and calling card minutes without knowing it.

Unlike companies delivering residential services over the public Internet, Cbeyond Communications will be delivering toll quality voice over a private network with strong Quality of Service (QoS) guarantees to insure higher quality and reliability for our business customers.

Customers will notice a difference in features that softswitch technology affords versus traditional Class 5 switches. Cbeyond will launch its product with the most commonly used features that provide value for customers, including call waiting, call forwarding, caller ID, hunting, three-way conference calling, call hold, and call transfer, to name a few. At the same time, we are developing a new generation of integrated voice and data applications that simply cannot exist in the legacy phone network.

Q: Will your technology support your strategy?

A: We will launch with a top quality product that is delivered in a consistent and timely manner because we will employ highly scalable processes for provisioning, installation, and management. Our trials are already demonstrating successful, high quality VoIP calls through our softswitch. We are driving our technology to deliver service quality that meets the highest possible industry standards. We are confident of having the solution to meet our target date of a controlled launch in late 2000.



Internet Protocol (IP) networks offer many advantages over traditional telephone equipment, such as flexibility, density, and performance, and they are easier to install and better. It is obvious that IP has won the market, and the world's largest networks are now built with it. Voice over IP provides an open architecture for the World Wide Web, and supports our vision of business applications delivered at a transparent, limited speed, latency, and simplicity.

ROBERT SANDERS, Chief Technology Officer

Q: Who are your competitors?

A: The LECs (short for Local Exchange Carrier), which you know as your traditional local telephone companies. They own 95% of the market.

Q: Aren't you just like another CLEC or ICP?

A: No. We are at least one generation ahead.

A competitive local exchange carrier (CLEC) provides narrowband voice and data services over a circuit-switched network. An integrated communications provider (ICP) offers bundled voice and data services over separate voice and data networks.

We are a bASP (Broadband Application Service Provider) who will provide integrated voice and Internet-based applications over a common broadband IP network.

Simply put, Cbeyond Communications is more than:

- a CLEC, because we deliver more than Voice; more than
- a CLEC (data local exchange carrier), because we offer more than Data; more than
- an ICP, because we use Internet Protocol to deliver everything, thereby bundling our offerings; more than
- an ASP (application service provider) because we are a network and relationship with customers.



Cbeyond is about "so much more than phones." We are a Broadband Application Service Provider, integrating productivity enhancing applications with our core product of local, long distance and Internet access over a broadband IP network. Bob Morris, EVP, President, Sales & Service

Q: How will your financials differ from the legacy carriers?

A: At Cbeyond, we will have lower costs in capital investment and on-going maintenance of one infrastructure. We will reinvest those savings in superior OSS and BSS systems to create an organization that is "high touch" with our customers—which will lead to customer retention, reduced churn and increased wallet share and, therefore, mind share of our customer's communications decisions.



Our capital expenditures in a typical market will be 60% less than the cost of a traditional state-based market entrant. We will also reap continued savings in only managing one architecture.

Glenda Capeling, VP and Controller

Q: What will the \$141 million raised in your initial funding be used for?

A: We found a ready response as we sought initial financing, and we were able to select an investor group which is highly respected in the venture capital market and experts in the telecommunications industry. They are not only providing funding, but they are able to provide insights and guidance from their experiences with other successful ventures. Cbeyond's management are investors as well, indicating our commitment to the enterprise and a belief in what we are doing.

We are focusing our spending on three areas as we lay the groundwork for the future: our team; our technology (or the infrastructure) and our automation (systems that are the glue for the infrastructure).

We're planning an initial, controlled launch of our services in Atlanta in late 2000. The Cbeyond product should be generally available during the first quarter of 2001 in Atlanta with a rapid market rollout to 25 of the top markets over the next couple of years.

We are looking to be working with our customers to help them understand the value of our services and to help them understand the value of our services.



Bob Burgess, EVP, Chief Financial Officer

Q: What is today's regulatory climate like?

A: What Cbeyond is doing is exactly what Congress envisioned in the Telecom Act of 1996.

Congress is clearly encouraging providers to service lower numbers of line sizes for smaller businesses. Regulators have been putting pro-competitive rules in place to implement the Act over the past four years.

Cbeyond will continue to lower the bar for smaller business customers who are not directly addressed by CLECs. We will be able to help drive technology and the economics of provisioning service as we roll out our plan.



Rules and pricing in place today provide more regulatory certainty for next generation companies like Cbeyond. The economic model of our new technology platform will put competitive pressure in the market as we sell to previously unreachable customers. We expect favorable treatment under the law since our business plan is moving competition where Congress and the regulators intended.

JULIA STRAWN, VP, Regulatory and Industry Policy

Q: What is management's background?

A: We have a winning combination—an experienced team that is filling a real need for a targeted market with the newest technology.

We have a proven team. Cbeyond executives have helped innovative telecom firms such as Mindspring, Intermedia Communications, Digex, MCI WorldCom, Sprint, Skytel and Splitrock. We recognize the issues and opportunities in our market. We are excited about the opportunity to design architecture and support systems that will revolutionize communications for the small business market.



The talent, experience and passion of our team was one of the key factors in making one of the largest venture-backed financings for a telecommunications company.

MARK MARX, Chief Administrative Officer

Q: What is Cbeyond's culture?

A: As a brand new company, we have the opportunity to create our own culture—one that allows our employees to use their entrepreneurial spirit at an exciting, next generation technology company that is passionate about changing the customer experience.

We have created an energetic environment that is fun, challenging and focused on learning. Our employees enjoy a great deal of self-satisfaction as they take an active role in building this successful venture. These strengths, and many others, give us the tools we need to hire and keep employees who embrace our values:

- Putting the customer first;
- Placing integrity at the foundation of our business;
- Being known by our relationships;
- Embracing continuous learning;
- Delivering success by doing what we say we will do; and
- Continually stretching to higher standards.



It is the passion of our employees that will drive Cbeyond to success in the next generation technology market.

JOAN TORDERELLA, VP Human Resources

Q: In a few words, why will Cbeyond succeed?

A: We are focused on a huge market that is rapidly growing and under-served. Small businesses are currently burdened with multiple suppliers for their communication needs, and we will resolve those issues for them.

As a first in this new generation of Broadband Application Service Providers, we will lead this industry in embracing the next generation technologies in order to deliver value-added applications that support our customer's efficiency and growth.

We are solidly financed, reflecting our ability to work with top quality investors and business partners. We have a clear business plan, beginning

with a controlled rollout in Atlanta and aiming for coverage of 25 metropolitan areas by 2003.

We know what problem we are trying to solve and we have the team and focused technology to attack it. We have a singular vision of quality and service excellence. We will enable small business customers to "bridge the digital divide."



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we have the team and focused technology to attack
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Jim Genser, President and CEO

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Phone: 678-424-2400 • Fax: 678-424-2500 • E-Mail: info@cbeyond.net

Funding keeps on truckin' in Q2

By Julie Landry

Redherring.com, August 09, 2000

What goes up must come down, but the astronomical sums being sunk into startups by venture capitalists show no signs yet of obeying that natural law.

Venture capital investments in the second quarter of 2000 soared to \$24.5 billion, a 96 percent increase over the \$12.5 billion invested in the second quarter of 1999, according to new data released Monday by the National Venture Capital Association (NVCA). Even though the quarter, measured from April 1 to June 30, featured a rocky stock market, VCs invested more than the \$22.7 million they invested in the comparatively freewheeling first quarter.

Could it be that VCs, so quick to advocate caution ever since the public markets went galloping downhill, are just as spend-happy as before? Not necessarily, says John Taylor, director of research for the NVCA. "What's being invested in now is being invested in tomorrow's market, not today's," he says. "A strong IPO market is more essential three, four, or five years out, when the companies that have been invested in today are finally mature." Mr. Taylor adds that acquisitions have become a far more acceptable and common exit strategy for VCs.

Also, VCs currently hanker after communications, optical networking, and enabling Internet technologies -- which all require significant investments-driving up the venture dollars invested.

SPREADING THE WEALTH

Money from outside Silicon Valley was largely responsible for the quarter's two largest fundings. Brence's \$200 million round came entirely from the \$2 billion fund of Chicago's GTCR Golden Rauner, while Madison Dearborn Partners of Chicago led a \$200 million round for Looking Glass Networks in June, joined by Battery Ventures and other investors.

Funding looks likely to stay strong in the coming year, as many firms begin to open the purse strings on their shiny new billion-dollar-plus funds. This week, VantagePoint Venture Partners's \$1.5 billion fifth fund became the latest in the billion bucks club.

One of the major reasons for the gargantuan funds, according to the NVCA's Mr. Taylor, is that the money's available. "Part of the reason why fundraising has been so easy this year is that VCs left a lot of money on the table last year," he says. Now, they're going back for more, and the funds with good returns and reputations are finding it pretty easy to scare up those billions from the limited partners who had tried to offer them the first time around.

Most of the big funds, like the rest of the VC industry, say their investments are humming along to the tune of communications and Internet infrastructure. VantagePoint is among those. Its new \$1.5 billion fund will focus on communications, data networking, semiconductors, photonics, and Internet infrastructure. Those sectors have the fawning attention of public investors and VCs these days, but Managing Partner Alan Salzman says those sectors have always been the firm's sweet spot (although he neglected to mention the firm's investments in the failed Healthshop.com and sagging iVillage).

VantagePoint's prior fund was \$575 million, and its investments slowed dramatically in the second quarter, according to Mr. Salzman. Now that things have returned to a less exuberant state, Mr. Salzman says the pace of investment has returned to normal but adds that the new fund's size doesn't portend a wild increase in company fundings or funding sizes. "Our last fund lasted about a year, so we wanted to stretch out the investment period to make sure that the fund lasted two to three years," he says. "It's wiser to spread your investment period over a longer period of time. The problem is that the more concentrated you are in when you're spending the money, the more you're subject to the economic cycle you're investing in."

NOT FOR US, THANKS

Even in the lucrative infrastructure investing space, though, not everybody wants to be a giant. Count Comventures among them: the firm announced this week that it had closed Comventures V at \$550 million. The fund's size increased substantially over the \$350 million Comventures IV, but General Partner Roland Van Der Meer says both funds were oversubscribed. "We have a limited size of only six partners, and we'd still like to be a boutique firm," says Mr. Van Der Meer. "We just don't think the model is scalable."

Mr. Van Der Meer is skeptical that funds and fundings will continue to increase in size. "We're at the peak," he says. "With the size of funds that have been raised, returns will start to go down just by the very nature of venture."

Top 10 fundings in the second quarter (source: Venture Economics/NVCA):

Brence, \$200 million
 Looking Glass Networks, \$200 million
 Performance Materials Corporation, \$193.4 million
 Formus Communications, \$175 million
 CoreExpress, \$164.4 million
 Redwood Communications, \$160 million
 Clayco Communications, \$141 million

Realm, \$141 million
Comstellar Technologies, \$135 million
TelePacific Communications, \$127 million

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Cbeyond Raises \$141M in Seed Capital

by David Carey email: reporters@thedailydeal.com

April 24, 2000—On Monday, a trio of big private equity fundings were announced in the telecom sector. The most noteworthy was Cbeyond Communications, which raised \$141 million, in one of the largest telecom seed financings ever from a private equity consortium led by Madison Dearborn Partners.

Cbeyond is a competitive local exchange carrier, or CLEC, in Atlanta that boasts a new telecom technology. Madison Dearborn sank \$55 million in Cbeyond, and Morgan Stanley Dean Witter Private Equity, the next largest investor, put in \$30 million. Other investors include Battery Ventures and VantagePoint Venture Partners, which contributed \$20 million and \$15 million, respectively. The group's equity stake in Cbeyond is about 80%, said Doug Grissom, a Madison Dearborn director who portrayed the company as a "next-generation CLEC." Cbeyond's technology, still in development, uses Internet protocol, the programming language of the Internet, to deliver bundled services, including long-distance and local telephone service, high-speed Internet access and data transmission, from a single platform.

"A lot of people are racing to perfect this technology, like Lucent Technologies, Cisco Systems and Nortel Networks," Grissom said. "CLECs will migrate to this technology, but this is the first communications services provider that will begin life using it."

While there's nothing unusual about Cbeyond's package of services, the one-platform programming system is unique, Grissom said. Other CLECs require an array of separate operating systems, one for each service.

"We'll have one architecture to manage, which will make it easy to add new services we can only begin to imagine now," said James Geiger, Cbeyond's president and CEO. "Our capital costs will also be a lot lower—disruptively lower—than those of a traditional CLEC."

Geiger estimated that Cbeyond's equipment costs for each major city it enters would run from \$2 million to \$3 million. That compares with about \$10 million for CLEC using older technology, he said. Cbeyond, whose clients will be small- and medium-sized businesses, aims to enter 25 large cities in 24 months, starting with Atlanta this fall. The company has scheduled trials for its service to begin Oct. 1.

First, however, Cbeyond must eliminate technological glitches. Unlike most phone conversations, which tie up entire phone lines, Cbeyond's system will break up voice transmissions into many digital data "packets." While fracturing the signal enables a single phone line to carry several conversations at once, Cbeyond and its rivals must iron out kinks.

"Right now, there are time delays in voice transmission and applications-related problems," Grissom said. "The company expects to solve those problems by the time it rolls out the service."

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CC Docket 96-98
UNE-P and Facilities-Based Competition
January 3, 2001

UNE-P and Facilities-Based Competition



- Birch is a rapidly growing *facilities*-based carrier for whom UNE-P is critical
- We serve customers and markets that would otherwise not see the benefits of competition
- To ensure that Birch and other competitive carriers can successfully transition to and develop a facilities-based strategy to serve small business and residential consumers, the Commission must increase the line cap



Who We Are

- At the end of November 2000 Birch served 65,099 customers with 230,936 access lines
 - Currently operational in Texas, Missouri, Kansas, and Oklahoma, targeting small businesses
 - Launched service in BellSouth on January 1, 2001
 - UNE-P is the key to our facilities-based strategy; it allows us to develop the customer base and revenue stream that are necessary precursors to effective facilities-based competition
-

Birch's Service Evolution



Resale

1997–1998

Switching

1998–1999

UNE-P

1999→

Broadband

2000→

- Birch began providing service in St. Joseph, Missouri and smaller communities in Kansas in 1997 through resale.
 - Birch installs switches in 1998 in Kansas City, St. Louis, and Wichita.
 - Birch was a UNE-P pioneer in Texas, using its experience there to expand UNE-P to Missouri, Kansas and Oklahoma.
-

Facilities-based Strategy

- Circuit switches currently in place in three markets serving customers at DS1-size and above
 - ATM switching network operational
 - Currently rolling out DSL
 - 158 collocations in place
 - Provisioning customers in Texas; trialing in Missouri, Kansas, and Oklahoma
 - Deployment in Texas first because UNE-P available there first
 - Will deploy softswitches once technology is ready
 - Currently testing various vendors' products in proof of concept laboratory
-

Year 2000 Capital Expenditures



(\$ in millions)

Back Office Systems	\$40.0
Collocations	29.0
ATM Switching Facilities	23.0
Integrated Access Devices	2.0
Other	<u>11.0</u>
Total	<u>\$105.0</u>

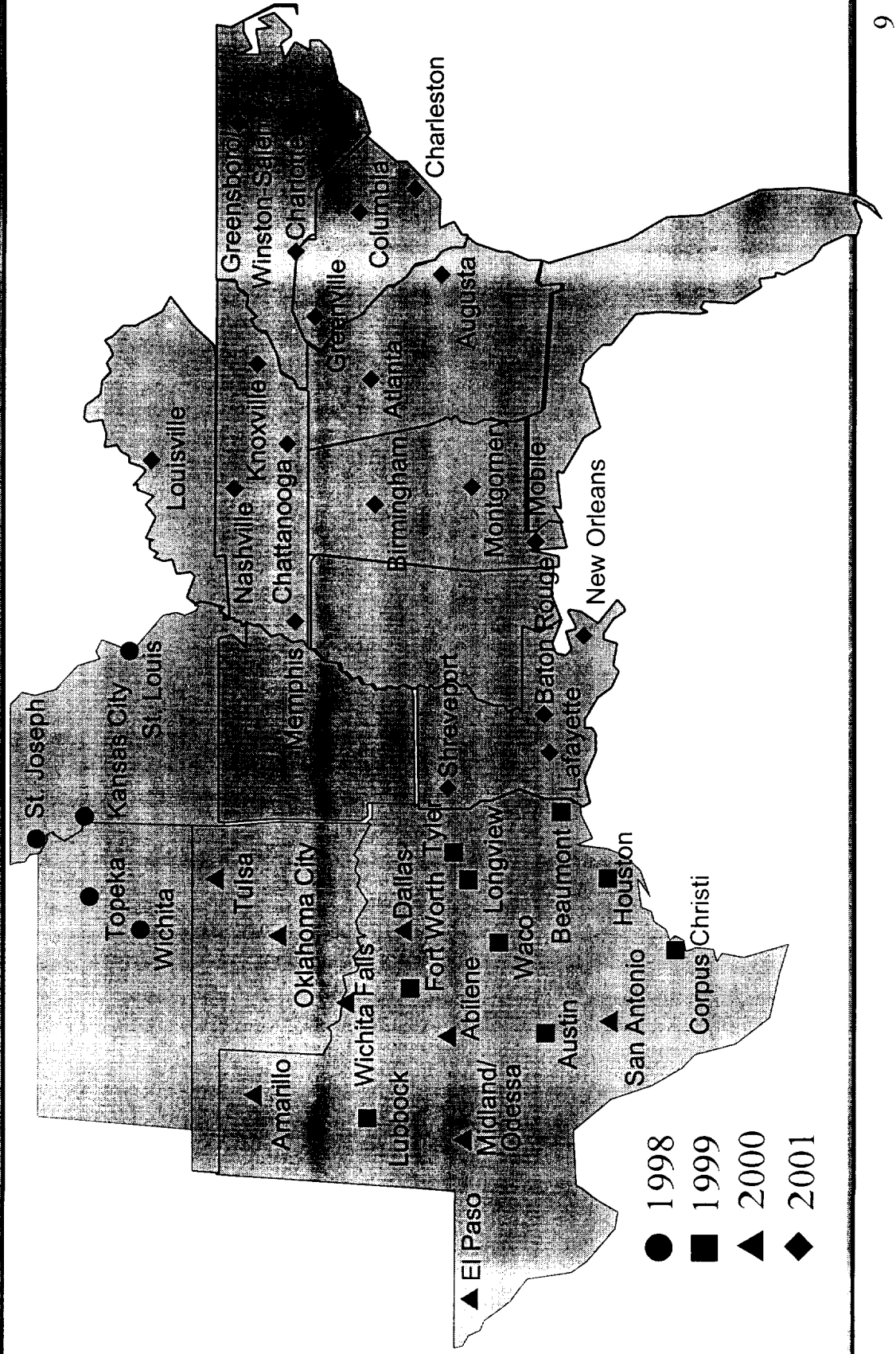
Who Our Customers Are

- We serve the truly small business market
 - Our average customer has fewer than 4 lines (70% have 4 or fewer lines)
 - Yet 45% of revenue from 7+ line customers
 - The carriers who are opposed to an increase in the line cap serve much larger customers
 - Those carriers have average line sizes that range from 8-10 to several times higher
 - These are completely different markets; our sales representatives don't see the other carriers in the field
-

Where Our Customers Are

- We are currently in 23 markets in Southwestern Bell, launching 14 in BellSouth
 - We serve the entire market not just downtown business districts
 - We are in Dallas and Beaumont
 - We have customers in every county in Kansas
 - By contrast, the CLECs who oppose an increase in the line cap concentrate on the dense urban cores of Tier 1 markets
-

Current Market Coverage



An Increase in the Line Cap is Critical



- We have demonstrated that--even where a circuit switch is already in place--it is not economical to serve customers under the DS1 level through self-provisioned switching
 - Because of the costs associated with the provisioning process, it is not cost effective even at the margin to provide individual analog voice lines to a customer through self-provisioned switching
 - The CLECs opposed to an increase in the line cap are serving very different markets and have very different business plans; their experience does not mean there is no impairment
-

An Increase in the Line Cap is Critical



- Birch is currently precluded from serving a segment of our market critical to our overall viability and our ability to serve a broad customer base
- The ability to serve the top 50 markets and grow a customer base is critical both to our ability to continue to serve secondary and tertiary markets and to successfully transition to and develop a softswitch-based VoDSL strategy

An Increase in the Line Cap is Critical



- An increase in the line cap does not stifle the incentive to deploy facilities
 - Circuit switch deployment remains viable for larger customers
 - Birch deploys facilities even where there is no line cap, e.g., TX, MO, OK, KA
- Viability of UNE-P is essential to continued capital inflow for facilities deployment